IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.764 OF 2006
IN
NOTICE OF MOTION NO.4648 OF 2004
IN
L.C.SUIT NO.5412 OF 2004
WITH
CIVIL APPLICATION NO.1189 OF 2006

The Khadi Ashram Seva Mandal ...Appellant

Versus

The Municipal Corporation of Gr.Mumbai ...Respondent

.....

Mr.M.A.Patel for Appellant.

Mrs.Geeta Joglekar for Respondents.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JANUARY 24, 2007.**

**P.C.**

1. As Trial Court has accepted the stand of the Defendant Corporation that the suit structure was allowed to be erected on condition that it would be property of the Mumbai Municipal Corporation, coupled with the fact that the structure was coming in the way of road line of

Goregaon-Mulund Link Road, no fault can be found with the decision of the lower Court in rejecting the Notice of Motion and vacating the interim orders which were operating in favour of the Plaintiff. The argument that no action is taken against other similarly placed structures has also been addressed by the lower Court by referring to the decision of the Apex Court in the case of **Premji Ratansey Shah & Ors. vs. Union of India & Ors. reported in (1994) 5 SCC 547**. The lower Court has rightly observed that whether the project is a public project is also matter for the State and the wisdom of the State on that issue cannot be gone into by the Court. Hence, this Appeal should fail. The same is dismissed.

2. In view of the above, companion Civil Application also stands disposed of.

A.M.KHANWILKAR, J.